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June 24, 2005

By Courier and E-File

Mary L. Cottrell, Secretary  
Department of Telecommunications and Energy  
One South Station, 2<sup>nd</sup> floor  
Boston, MA 02202

Re: Bay State Gas Company, D.T.E. 05-27

Dear Ms. Cottrell:

Enclosed for filing, please find the Response of Bay State Gas Company to the Attorney General's Appeal of Hearing Officer's Ruling Pertaining to the Procedural Schedule.

Please do not hesitate to contact me with any questions.

Very truly yours,

Robert L. Dewees, Jr.

cc: Caroline O'Brien Bulger, Esq., Hearing Officer (1 copy)  
John Sullivan, DTE (7 copies)  
Andreas Thanos, Assistant Director, Gas Division  
Alexander Cochis, Assistant Attorney General (4 copies)  
Paul R. Osborne, Assistant Director, Rates and Revenue Requirements Division (1 copy)

**THE COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

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Petition of Bay State Gas Company )  
For Approval of Revised Tariffs )  
And Other Rate Modifications )  

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D.T.E. 05-27

**RESPONSE OF BAY STATE GAS COMPANY  
TO THE ATTORNEY GENERAL'S APPEAL OF HEARING OFFICER'S RULING  
PERTAINING TO THE PROCEDURAL SCHEDULE**

On June 15, 2005, the Attorney General filed an Appeal of the Hearing Officer's Ruling Pertaining to the Procedural Schedule. The Attorney General claims that the procedural schedule constitutes an abuse of discretion by the Department, and he requests numerous changes to the schedule. Other parties have also submitted certain objections to the procedural schedule.<sup>1</sup>

The procedural schedule issued by the Hearing Officer in this proceeding is fair and reasonable, and clearly within the discretion granted to hearing officers in Department proceedings to make decisions on procedural and scheduling matters. Bay State Gas Company ("Bay State") supports the procedural schedule and opposes the various proposals to change it. Therefore, Bay State opposes the Appeal by the Attorney General and requests that the Commission deny it.

The Department's rules give a hearing officer wide discretion to make all decisions regarding procedural matters that may arise in the course of a hearing. 220 C.M.R. 1.06 (6)(a) and (b). Here, the Hearing Officer has issued a procedural schedule that appropriately considers

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<sup>1</sup> MASSCAP et al. filed an appeal of the procedural schedule, and Local 273 of the Utility Workers Union of America and the United Steelworkers of America supported MASSCAP's appeal. Bay State and MASSCAP believe they are close to a settlement with respect to MASSCAP's participation in this case. See, Joint Motion of Bay State and MASSCAP filed June 21, 2005.

the statutory deadline under which this proceeding must be conducted (G.L. c. 25, §18), the interests of all of the parties and the obligations on the Department to investigate Bay State's filing.

The Attorney General makes much of a calculation he presents in his Appeal purporting to show that in recent rate cases, hearings have begun on average approximately 74 days after the company involved filed its petition for increased rates. However, Bay State made its filing in this proceeding on April 27, 2005, over two weeks before statutorily required to, in order to allow the Department and all parties as much additional time as possible beyond the statutory six month suspension period to investigate its filing. The procedural schedule allows 69 days between the Company's filing and the start of hearings, which is not significantly different from the 74 day average reported by the Attorney General.

The Attorney General argues that Bay State's filing in this proceeding goes beyond the scope of "the average rate case", and refers to Bay State's PBR and PBOP proposals. Appeal, p. 4. These aspects of its filing are hardly novel, and are in conformance with recent Department findings on these issues.

The Attorney General also argues that the procedural schedule "cuts short" the discovery phase of the case. *Id.* The facts do not support this claim as, at this point in the case, over 1,400 discovery requests have been issued. It is doubtful that there are any significant number of substantive areas that have not already been inquired into through discovery.

The Attorney General has demonstrated no good cause for any change in the procedural schedule, which Bay State believes is administratively efficient and appropriately balances the interests of the Department and all parties to his proceeding. Bay State supports the procedural schedule.

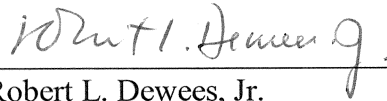
## CONCLUSION

For the foregoing reasons, Bay State requests that the Attorney General's Appeal of the Hearing Officer's Ruling on the Procedural Schedule be denied.

Respectfully submitted,

BAY STATE GAS COMPANY

By its attorneys,



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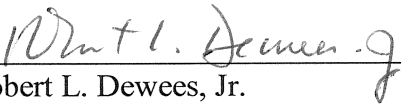
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Dated: June 24, 2005

# CERTIFICATION

I certify that I served today a copy of the attached Response of Bay State Gas Company to the Attorney General's Appeal of Hearing Officer's Ruling Pertaining to the Procedural Schedule by hand delivery, first class mail, postage prepaid, or electronically on the Department of Telecommunications and Energy and all parties on the service list on file with the Secretary of the Department of Telecommunications and Energy for this proceeding.

Dated at Boston, Massachusetts this 24th day of June, 2005

  
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Robert L. Dewees, Jr.